

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

9
0
1
2
3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

0
1
2
3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

9 Araya Wolde Giorgis, et al.,
0
1 Plaintiffs,
2
3 vs.
4
5 John C. Ogden, et al.,
6
7 Defendants.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

0 Plaintiffs,
1 vs.
2 John C. Ogden, et al.,
3 Defendants.
4
5 _____

6
7 The court has before it defendants’
8 Marcolini’s motion to dismiss (“CIM defer
9 and Bryan Cave LLP’s motion to dismiss
10 and Michael K. Kennedy’s motion to dism
11 Mark G. Worischeck and Julianne D. Blum
12 defendants’ joinder in other defendants’ m
13 all motions to dismiss (doc. 15), and the def
14 We also have before us plaintiffs’ motion
15 (docs. 22, 29, 30, 32).

16 This action purports to assert a perso
17 she allegedly sustained in May 2003 at Fide
18 the amended complaint contains sweeping

27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
86

26
27
28

1 discrimination, and other state and federal statutory violations against lawyers, law firms, and
2 others, on behalf of Ida's father, Araya Wolde Giorgis—claims having little or no connection
3 to the underlying personal injury cause of action.

4 Plaintiffs initially filed this action in state court on January 26, 2009. On June 1,
5 2009, the case was removed to this court with the consent of all defendants who had been
6 served. While still in state court, plaintiffs were granted an additional 90 days to accomplish
7 service of process with a new deadline of August 26, 2009. We recently denied plaintiffs'
8 request for an additional 120 days in which to serve the remaining defendants (doc. 37).
9 Because almost ten months have passed since this case was originally filed, we now dismiss
10 without prejudice all claims against those defendants who have not been served: Dick James,
11 Dick James Associates, Inc., Palm Villas of Scottsdale, Michael Gallagher, Christian J.
12 Mayled, John C. Ogden, Steve Betts, Seth H. Blum, Fiddlesticks Family Fun Park, and Park
13 Management.

14 Each of the remaining defendants (with the exception of Sean Stechenfinger and
15 Suncor Development Company) (collectively, "Movants"), now move to dismiss all claims
16 pursuant to Rule 12(b)(6), Fed. R. Civ. P.

17 A pleading must contain a "short and plain statement of the claim showing that the
18 pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To survive a motion to dismiss, a
19 plaintiff must provide more than "a formulaic recitation of the elements of a cause of action."
20 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965 (2007). While Rule
21 8 does not demand detailed factual allegations, "it demands more than an unadorned, the-
22 defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949
23 (2009). "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a
24 claim to relief that is plausible on its face.'" Id. (quoting Bell Atl. Corp., 550 U.S. at 570,
25 127 S. Ct. at 1974). A claim is plausible "when the plaintiff pleads factual content that
26 allows the court to draw the reasonable inference that the defendant is liable for the
27 misconduct alleged." Id.

1 Movants each contend that the amended complaint fails to state a claim upon which
2 relief can be granted. We agree. The amended complaint is devoid of a cognizable legal
3 theory supported by any factual content that would allow us to draw a reasonable inference
4 that any Movant is liable for the misconduct alleged. Instead, the amended complaint
5 contains a laundry list of statutes that the plaintiffs allege were violated. Plaintiffs' only
6 allegation in the amended complaint is that Movants "conspired" with each other and
7 "resorted to sabotage of Plaintiff's court cases and also resorted to defamation of Plaintiff"
8 in violation of "42 U.S.C. 1981, 1983, 1985, and 1986, and other federal and state statutes
9 including ARS 12-651, ARS 12-652, ARS 12-653, ARS 12-349, and ARS 12-541," as well
10 as "Article II, Sections 4, 6, and 8 of the Arizona Constitution." See Amended Complaint
11 ¶¶ 5-8. These claims are insufficient under any standard to assert a claim for relief. It is
12 wholly inadequate to simply cite a violation of a statute and nothing more. Although
13 plaintiffs exercised their right to file an amended complaint, the amended complaint does
14 little to rectify the inadequacy of their claims.

15 Plaintiffs allege that Movants violated their rights under 42 U.S.C. §§ 1981, 1983,
16 1985, 1986, and Article II, §§ 4, 6, and 8 of the Arizona Constitution without any factual
17 allegations to support these claims. Section 1981 refers to discrimination in the making and
18 enforcing of contracts. No such allegation exists here. Section 1983 and Article II, § 4, 6,
19 and 8 of the Arizona Constitution require state action. Fiesta Mall Venture v. Mecham
20 Recall Comm., 159 Ariz. 371, 373, 767 P.2d 719, 721 (Ct. App. 1988); Dimond v. Samaritan
21 Health Serv., 27 Ariz. App. 682, 684, 558 P.2d 710, 712 (Ct. App. 1976). But the Movants
22 are private persons or entities. Sections 1985 and 1986 proscribe conspiracies to interfere
23 with civil rights. Plaintiffs fail to allege a single factual allegation to support the existence
24 of a conspiracy, or that they were deprived of any constitutional right. Plaintiffs' allegations
25 in their amended complaint that the CIM defendants were involved in an "illegal" transfer
26 of the Palm Villa property in a "fraudulent scheme in order to beat [a] lawsuit," Amended
27 Complaint ¶ 8, does not provide factual support for any of the asserted claims. Each of these
28 claims is dismissed.

Moreover, plaintiffs' bare citation of A.R.S. §§ 12-651, 12-652, 12-653, 12-349, and 12-541 fail to state cognizable claims. Section 12-651 is Arizona's Uniform Single Publication Act and itself provides no independent basis for relief. Sections 12-652 and 12-653 apply only to traditional print media, which obviously does not apply here. Section 12-349 authorizes sanctions against a party filing unjustified legal actions. Plaintiffs have alleged no facts that would support an award under this statute. Finally, section 12-541 is a statute of limitations for various claims, not a separate cause of action. None of these statutes provides a basis for a cognizable claim, and each claim is dismissed.

Plaintiff Ida Araya asserts that she was negligently injured while she was at Fiddlesticks Family Fun Park. But there is no allegation that any of the Movants were involved in the alleged negligence. To the extent plaintiffs assert a negligence claim against any Movant, it is dismissed.

Plaintiffs' defamation claim fails as well. A claim for defamation requires a plaintiff to establish (1) publication by defendant, (2) of a false and defamatory communication concerning plaintiff, (3) fault amounting to at least negligence. Dube v. Likins, 216 Ariz. 406, 417, 420, 167 P.3d 93, 104, 107 (Ct. App. 2007). Plaintiffs have failed to allege a single fact against any of the Movants to support any of the required elements of a defamation claim. Plaintiffs' bald allegation that Movants "resorted to defamation of plaintiff," is insufficient under any standard to state a claim for relief. Plaintiffs' defamation claims are dismissed.

Not only have plaintiffs failed to assert any factual or legal basis to support any of their claims in their amended complaint, they fail to respond to any of the arguments raised in Movants' motions to dismiss. Failure to respond to arguments raised in dispositive motions "may be deemed a consent to the . . . granting of the motion," LRCiv 7.2(i), and serves as an additional basis upon which to grant Movants' motions.

We conclude that plaintiffs have failed to articulate any factual or legal basis for the claims raised in their amended complaint. As such, all Movants are entitled to dismissal of all claims with prejudice pursuant to Rule 12(b)(6), Fed. R. Civ. P.

1 We are left with claims asserted by the two remaining defendants who have answered
2 but not moved to dismiss, Sean Stechenfinger and Suncor Development Company. Mr.
3 Stechenfinger is alleged to be an employee of Fiddlesticks Family Fun Park, and Suncor
4 Development is alleged to own Fiddlesticks. Although these defendants have not moved to
5 dismiss claims against them, we conclude *sua sponte* that the rationale supporting the
6 dismissal of claims against the Movants apply with equal force to the claims asserted against
7 Stechenfinger and Suncor Development, with one exception. Plaintiff Ida Araya alleges that
8 on or about May 6, 2003, she was injured while at Fiddlesticks Family Fun Park as a result
9 of Stechenfinger and Suncor's negligence. Because this is a state law claim, and in the
10 absence of any remaining federal claims, we decline to exercise supplemental jurisdiction
11 over this sole remaining claim. See 28 U.S.C. § 1367(c)(3). Instead, the remaining claim
12 is remanded to state court.

13 We deny plaintiffs' request to file yet another amended complaint, not only because
14 the request fails to satisfy the requirements of LRCiv 15.1, but also because, with the
15 exception of Ida Araya's negligence claim, this action is wholly frivolous and no amendment
16 can save it.

17 Therefore, **IT IS ORDERED DISMISSING** without prejudice all claims against
18 those defendants who have not been served: Dick James, Dick James Associates, Inc., Palm
19 Villas of Scottsdale, Michael Gallagher, Christian J. Mayled, John C. Ogden, Steven Betts,
20 Seth H. Blum, Fiddlesticks Family Fun Park, and Park Management.

21 **IT IS FURTHER ORDERED GRANTING** the CIM defendants' motion to dismiss
22 (doc. 5), **GRANTING** Caroline K. Larsen and Bryan Cave LLP's motion to dismiss (doc.
23 6), **GRANTING** Gallagher & Kennedy, P.A., and Michael K. Kennedy's motion to dismiss
24 (doc. 8), **and GRANTING** Sanders & Parks, P.C., Mark G. Worischeck and Julianne D.
25 Blumenreich's motion to dismiss (doc. 9), all with prejudice.

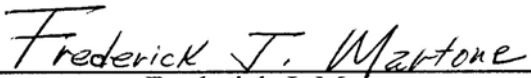
26 **IT IS ORDERED SUA SPONTE DISMISSING** with prejudice all claims against
27 Sean Stechenfinger and Suncor Development Company, except for the single negligence
28 claim asserted by plaintiff Ida Araya arising from the alleged injury she sustained at

1 Fiddlesticks Family Fun Park on or about May 6, 2003. This claim only is remanded to the
2 Superior Court of Arizona in Maricopa County. In all other respects, **IT IS ORDERED**
3 **DENYING** plaintiffs' motion to remand (doc. 13).

4 It is further ordered vacating the Rule 16 conference scheduled for October 30, 2009.

5 We urge plaintiffs to seek the advice of counsel. If they do not have one, they may
6 wish to contact the Lawyer Referral Service of the Maricopa County Bar Association at 602-
7 257-4434.

8 DATED this 26th day of October, 2009.

9
10 
11

 Frederick J. Martone
United States District Judge